

California Regional Water Quality Control Board
Santa Ana Region
Staff Report
January 22, 2004

ITEM: 18

SUBJECT: Mandatory Penalty Complaint No. R8-2003-0093 for USA Gasoline Corporation, Station #239, Big Bear Lake – Order No. R8-2004-0019

BACKGROUND

On September 2, 2003, the Executive Officer issued Mandatory Penalty Complaint (MPC) No. R8-2003-0093 to USA Gasoline Corporation (USA) for alleged violations of the General Groundwater Cleanup Permit, Order No. R8-2002-0007 (General Permit). In the MPC (attached), the Executive Officer proposed an assessment of \$24,000 for the alleged violations.

INTRODUCTION

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board), is to consider adoption of Order No. R8-2004-0019, which affirms MPC No. R8-2003-0093. MPC No. R8-2003-0093 was issued by the Executive Officer to USA for violations of the General Permit for which the Board must impose mandatory penalties pursuant to California Water Code (Water Code) Section 13385(h) and (i).

DISCUSSION

USA currently operates a gasoline service station at 41339 Big Bear Boulevard in the City of Big Bear Lake. Groundwater beneath the site is contaminated from underground storage tank related leaks and a groundwater treatment system treats and discharges groundwater from the site.

On July 16, 2002, USA was authorized to discharge treated water from its groundwater cleanup system under the General Permit in accordance with Monitoring and Reporting Program No. 2002-0007-91. The General Permit regulates the discharge of treated groundwater from petroleum-contaminated sites and contains effluent limits for a number of constituents, including daily maximum limits for tertiary butyl alcohol (TBA) and dichlorobromomethane. TBA and dichlorobromomethane are Group II pollutants as specified in Appendix A to Section 123.45 of Title 40 CFR.

USA submitted self-monitoring reports, which indicated effluent limit violations for TBA and dichlorobromomethane. These reports indicate that USA had a total of eight violations between July 2002 and January 2003. Six of these violations were considered serious, while the other two were chronic.

In accordance with Water Code Section 13385(h) and (i), all eight of these violations are subject to mandatory minimum penalties of \$3,000 each. Complaint No. R8-2003-0093 includes an assessment of \$24,000 for these eight violations.

STATEWIDE ENFORCEMENT POLICY

On February 19, 2002, the State Water Resources Control Board adopted a Revised Water Quality Enforcement Policy to ensure that enforcement actions throughout the State are fair, firm and consistent. The above-described mandatory penalty complaint is in accordance with the State Enforcement Policy.

RECOMMENDATION

Board staff recommends that the Board affirm MPC No. R8-2003-0093 by adopting Order No. R8-2004-0019.

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

In the matter of:)	Order No. R8-2004-0019
)	for
USA Gasoline Corporation)	Mandatory Minimum Penalties
30101 Agoura Court, Suite 200)	
Agoura Hills, CA 91301)	
)	
<u>Attn: Chuck Miller</u>)	

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), held a hearing on January 22, 2004 to receive testimony and take evidence on the allegations contained in Complaint No. R8-2003-0093, dated September 2, 2003, and on the recommendation for the imposition of mandatory penalties pursuant to Water Code Section 13385 in the amount of \$24,000. The Board finds as follows:

1. On January 23, 2002, the Board adopted Waste Discharge Requirements, Order No. R8-2002-0007 (NPDES No. CAG918001), General Groundwater Cleanup Permit (Permit). The Permit regulates discharges of extracted and treated groundwater resulting from the cleanup of groundwater polluted by petroleum hydrocarbons and/or solvents within the Santa Ana Region. The Permit contains effluent limits for a number of constituents, including tertiary butyl alcohol (TBA) and dichlorobromomethane. On July 16, 2002, the Executive Officer enrolled USA Gasoline Corporation (USA) under General Permit NPDES No. CAG918001, authorizing it to discharge treated groundwater from USA Station #239, located at 41339 Big Bear Boulevard in the City of Big Bear Lake. The discharge from USA's system went into a storm drain, then to Big Bear Lake, a water of the United States. USA was required to monitor the discharge in accordance with Monitoring and Reporting Program No. 2002-0007-91.
2. USA submitted self-monitoring reports, which indicate that it had a total of eight violations between July 2002 and January 2003. Six of these violations were serious and the other two were chronic. All eight violations are subject to mandatory minimum penalties.
3. Water Code Sections 13385(h) and (i) require the Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious and/or chronic violation.
4. In accordance with Water Code Section 13385(h), the total mandatory minimum penalty for the eight effluent limitation violations cited in Section 2, above, is \$24,000.
5. On September 2, 2003, the Executive Officer issued Complaint No. R8-2003-0093 to USA proposing that the Board impose the mandatory minimum penalty of \$24,000 on USA for the violations cited above.

6. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 2100 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED that, pursuant to California Water Code Section 13385, mandatory penalties be imposed on USA Gasoline Corporation in the amount of \$24,000, as proposed in Complaint No. R8-2003-0093 for the violations cited, payable as set forth below.

1. USA shall pay the entire \$24,000 to the State Water Resources Control Board by February 24, 2004.
2. The Executive Officer is authorized to refer this matter to the Attorney General for enforcement.

Pursuant to Water Code Section 13320, you may petition the State Water Resources Control Board for review of this Order. If you choose to do so, you must submit the petition to the State Board within 30 days of the Regional Board's adoption of this Order.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on January 22, 2004.

Gerard J. Thibeault
Executive Officer

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

IN THE MATTER OF:)	Complaint No. R8-2003-0093
)	
USA Gasoline Corporation)	for
30101 Agoura Court)	Mandatory Penalties
Suite 200)	
Agoura Hills, CA 91301)	
Attention: Chuck Miller)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. USA Gasoline Corporation (USA) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (Board) must impose mandatory penalties pursuant to California Water Code (Water Code) Section 13385(h) and (i).
2. A hearing concerning this Complaint is scheduled for the Board's regular meeting on October 3, 2003. USA or its representatives will have an opportunity to appear and be heard, and to contest the allegations in this complaint and the imposition of mandatory penalties by the Board. An agenda announcement and the staff report related to this Complaint will be mailed to you not less than 10 days prior to the hearing date.
3. If the hearing is necessary, the Board will consider whether to affirm, reject or modify the proposed mandatory penalty or whether to refer this matter to the Attorney General for recovery of judicial civil liability.
4. This complaint is based on the following facts:
 - a) USA currently operates a service station at 41399 Big Bear Boulevard, in the City of Big Bear. A groundwater treatment system treats and discharges groundwater to remediate the effects of an underground storage tank release at the site. On January 23, 2002, the Board adopted Waste Discharge Requirements, Order No. 2002-0007 (NPDES No. CAG918001), General Groundwater Cleanup Permit (Permit). The Permit regulates discharges of extracted and treated groundwater resulting from the cleanup of petroleum hydrocarbons and/or solvents within the Santa Ana Region by establishing effluent limits for a number of constituents, including dichlorobromomethane and tertiary butyl alcohol (TBA).
 - b) On July 16, 2002, USA was authorized to discharge treated groundwater resulting from its groundwater treatment system and was required to monitor

the discharge in accordance with Monitoring and Reporting Program No. 2002-0007-091.

- c) USA submitted self-monitoring reports, which show effluent limit violations for dichlorobromomethane and tertiary butyl alcohol. These violations are summarized on Attachment "A", included as Page 4 of this complaint.
5. Water Code Section 13385(h) and (i) requires the Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious and/or other specific types of violations.
 6. As shown in Attachment "A", USA had a total of eight violations between July 2002 and January 2003. Six of these violations are considered serious and two of the violations are chronic and all eight violations are subject to mandatory minimum penalty.
 7. In accordance with Water Code Section 13385(h), the mandatory minimum penalty for the eight effluent violations cited in Section 6, above, is \$24,000.
 8. In addition, the Board may also assess administrative civil liability of \$10,000 per day for each day of violation and \$10 per gallon for each gallon discharged in excess of 1,000 gallons in accordance with Water Code Section 13385(c). The maximum administrative civil liability that may be imposed for these violations is \$86,690 (\$50,000 for five days of violation and \$36,690 based on $4,699 - 1,000 = 3,699$ gallons @ \$10 per gallon).
 9. After consideration of the facts, the Executive Officer proposes that mandatory minimum penalties of \$24,000 be imposed on USA Gasoline Corporation, by the Board, for the violations cited above.
 10. You may waive your right to a hearing. If you wish to waive this right, please sign the attached waiver form and return it, along with a check for \$24,000, made payable to the State Water Resources Control Board, and the bottom portion of the invoice, to Sacramento in the enclosed envelope.

If you have any questions regarding this complaint, please contact Ken Williams at (909) 782-4496, or Valerie Jahn at (909) 782-4903, or the Board's legal counsel, Jorge Leon, at (916) 341-5180.

9/2/03
Date

K. J. Thibeault
for Gerard J. Thibeault
Executive Officer

ATTACHMENT "A"

TABLE 1A.
EFFLUENT LIMIT VIOLATIONS FOR TERTIARY BUTYL ALCOHOL

VIOLATION DATE	DISCHARGE FLOW Gallons Per Day	EFFLUENT LIMIT* Daily Maximum in µg/l	DISCHARGE (µg/l)
8/3/02	1,104	18.6	30
12/16/02	1,037	18.6	25
1/19/03	699	18.6	19

TABLE 1B.
EFFLUENT LIMIT VIOLATIONS FOR TERTIARY BUTYL ALCOHOL

VIOLATION MONTH	EFFLUENT LIMIT* Monthly Average in µg/l	DISCHARGE Monthly Average in µg/l**
December 2002	12.0	13.75

TABLE 2A.
EFFLUENT LIMIT VIOLATIONS FOR DICHLOROBROMOMETHANE

VIOLATION DATE	DISCHARGE FLOW Gallons Per Day	EFFLUENT LIMIT* Daily Maximum in µg/l	DISCHARGE (µg/l)
7/27/02	1,144	0.87	4.5
9/8/02	685	0.87	1.5

TABLE 2B.
EFFLUENT LIMIT VIOLATIONS FOR DICHLOROBROMOMETHANE

VIOLATION MONTH	EFFLUENT LIMIT* Monthly Average in µg/l	DISCHARGE Monthly Average in µg/l**
July 2002	0.56	4.5
September 2002	0.56	.75

* The receiving water is Big Bear Lake, which is designated for municipal use.

** For samples without reported values (e.g. ND), half of the reporting limit was used.

In the matter of:)	Complaint No. R8-2003-0093
)	for
USA Gasoline Corporation)	Mandatory Penalties
30101 Agoura Court)	
Suite 200)	
Agoura Hills, CA 91301)	
)	
Attention: Chuck Miller)	

WAIVER OF HEARING

I agree to waive the right of USA Gasoline Corporation, to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2003-0093. I have enclosed a check for \$24,000, made payable to the State Water Resources Control Board, as settlement. I understand that I am giving up the right of USA Gasoline Corporation, to be heard and to argue against allegations made by the Executive Officer in this Complaint and against the imposition of, and amount of, the liability proposed.

Date

for USA Gasoline Corporation



California Regional Water Quality Control Board

Santa Ana Region

Winston H. Hickox
Secretary for
Environmental
Protection

Internet Address: <http://www.swrcb.ca.gov/rwqcb8>
3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (909) 782-4130 - FAX (909) 781-6288



Gray Davis
Governor

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption.
For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.swrcb.ca.gov/rwqcb8.*

September 2, 2003

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Chuck Miller
USA Gasoline Corporation
30101 Agoura Court, Suite 200
Agoura Hills, CA 91301

MANDATORY PENALTIES COMPLAINT NO. R8-2003-0093

Dear Mr. Miller:

We are enclosing a certified copy of Complaint No. R8-2003-0093, proposing a mandatory penalty of \$24,000. This complaint is issued pursuant to California Water Code Section 13385 (h), for multiple violations of effluent limitations established in Waste Discharge Requirements, Order No. R8-2002-0007 (NPDES No. CAG918001). An invoice for this amount is also enclosed.

If necessary, consideration of this matter will be scheduled for the Board's meeting on October 3, 2003. The staff report regarding this complaint and a meeting agenda will be mailed to you not less than 10 days prior to the Board meeting.

You have the option to waive your right to a hearing. Should you decide to waive your right and pay the proposed assessment, the Regional Board may not hold a public hearing on this matter. If you choose to waive your right to a hearing, please sign the enclosed waiver form and submit the form with a check or money order for \$24,000. The waiver form, the bottom portion of the invoice and the check should be mailed to Sacramento using the enclosed envelope. All other correspondence regarding this complaint should be directed to the regional board office listed on this letterhead.

If you do not wish to waive your right to a hearing, a pre-hearing meeting with Board staff is recommended. Should you wish to schedule a pre-hearing meeting, please contact us prior to September 12, 2003. At that time, you may submit information that might not have been previously available to staff regarding this violation. This information should address the accuracy of the findings in the complaint.

California Environmental Protection Agency



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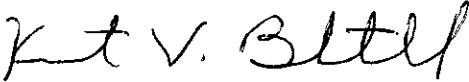
Mr. Chuck Miller
MPC R8-2003-0093

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September 2, 2003

If you have any questions regarding this complaint, you may contact Ken Williams at (909) 782-4496 or Valerie Jahn at (909) 782-4903. All legal questions should be referred to our legal counsel, Jorge Leon, at (916) 341-5180.

Sincerely,



for Gerard J. Thibeault
Executive Officer

Enclosures: Complaint No. R8-2003-0093, Waiver Form, Invoice and envelope

Cc w/enc. (R8-2003-0093):

Regional Board

State Water Resources Control Board, Division of Clean Water – UST Chief

State Water Resources Control Board, Office of the Chief Counsel – Jorge Leon

U.S. Environmental Protection Agency, Region 9 (WTR-7) – Kathi Moore

Mr. William Henry, Waterstone Environmental, Inc.

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California Environmental Protection Agency



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Mr. Chuck Miller
MPC R8-2003-0093

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September 2, 2003

Please cc:

UST Chief
State Water Resources Control Board
Division of Clean Water

Jorge Leon
State Water Resources Control Board
Office of the Chief Counsel

Kathi Moore
Environmental Protection Agency
Region 9 (WTR-7)

William Henry
Waterstone Environmental, Inc.
2936 East Coronado Street
Anaheim, CA 92806

California Environmental Protection Agency



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